E-mail to All "Sales" Send to Customers

J-

September 20, 1996

To Our Valued Trading Partners:

Recently, President Clinton has ruled that tobacco will be regulated by the Food and Drug Administration and his ruling will essentially adopt all of the regulations proposed by David A. Kessler, FDA Commissioner.

Following is R. J. Reynolds Tobacco's statement to the media:

RJR Response to FDA Rulemaking

Over two years ago, the United States Congress spoke out clearly on the issue of underage smoking by putting in place requirements on the states to implement steps to make it illegal to sell tobacco products to minors. That is the law. The Department of Health and Human Services has directed the states to take action now. The states have, and continue to respond, establishing a minimum age of 18 years to purchase cigarettes, restricting access to vending machines, and requiring identification to purchase tobacco products.

While it is appropriate for the federal government to provide direction on the issue of underage smoking, the states should be responsible for the implementation. In addition, the tobacco companies should and will continue voluntary efforts aimed at eliminating youth access to cigarettes.

Today there are more than 225 federal government agencies and offices spending over $100 million to review, oversee or control the tobacco industry. It is questionable whether adding the federal Food and Drug Administration will make the federal government more effective or more efficient.

####

Many of our valued trading partners are asking how this ruling affects their programs with the manufacturers. First and foremost, the regulations, if enacted, would not be effective for some time, so you should not make any changes in the way you are currently doing business, including the use of self-service displays and other in-store POS materials.

There are other questions -- "What are the manufacturers doing to stop this?"; "What can we do to protect our businesses?" We hear others saying that it is just a political maneuver during election year and it will go away.

Let's be serious about this matter. The FDA regulation of the industry could have catastrophic effects if it is imposed. The tobacco companies, some advertising groups, and some groups of retailers have filed a suit in the Federal District Court in Greensboro, North Carolina and moved for summary judgment on these grounds:

- The FDA has no jurisdiction to regulate tobacco products.
- Tobacco products are not drugs, devises or drug-delivery devices within the meaning of the Food, Drug and Cosmetic Act.
- The advertising restrictions contained in the regulations violate the First Amendment.

The court has established a briefing schedule, and oral arguments on the motion are scheduled for February 10, 1997. A favorable ruling on either of the first two grounds would void all of the regulations. A favorable ruling on the third ruling only would void restricting advertising for tobacco products.

51862 0933

Source: https://www.industrydocuments.ucsf.edu/docs/gkpm0000

The parties have informed the court that they need a ruling by the end of February due to the lead time that it would take to begin complying with the regulations. If an unfavorable decision is reached, most provisions would go into effect August 28, 1997 including bans of self-service displays of tobacco products. Two provisions affecting retailers go into effect on February 28, 1997: (1) the prohibition on sales to persons under the age of 18, which already is law in 50 states, and (2) the requirement that retailers verify the age of all tobacco purchasers who are 26 years old or younger by means of photographic identification.

Impact of the New FDA Rules on the Retailers Industry

Advertising and display bans will result in lost category volume overall and will greatly impact retail industry revenue from lost payments for display units. Marginal retailers will be forced out of the business due to increased compliance costs.

If the rules are upheld:

- The FDA can add new and even more drastic restrictions at any time without approval from elected officials.
- The FDA can barge into our places of business unannounced.
- The FDA can seize product and issue severe penalties for non-compliance.
- The FDA can dictate new inventory and tracking procedures that could put many small business out of the tobacco business.
- The FDA has the authority to ban tobacco products completely.

What Can Everyone Do?

- Write to President Clinton at the White House, your Senators, your Congressman, and your state and local officials to let them know the financial and employment affects the FDA will have on our businesses.

- Enforce the *WE CARD* program and show the elected officials at all levels of government that effective and responsible measures are working to curb access to tobacco products by underage buyers. These efforts directly support the states' responsibilities under the federal SAMHSA (Substance Abuse and Mental Health Services Administration) regulations issued in January.

- Proactively become involved with the enactment of legislation that will protect businesses.

- Do not overreact at retail. RJR will continue to update you in regard to the status of FDA issues on a timely basis as additional information becomes available. This information is critical for RJR and the retailer to make an informed decision. RJR is fully committed to assisting you through any transition should future changes become necessary.

Our future is now, and more than ever we need to make our voices heard. These proposed regulations are more ominous than the FET tax that many of you fought against in the not so distant past. Do not wait for others to carry the banner. Together, we can protect our rights to sell a legal product.

R. J. REYNOLDS TOBACCO COMPANY

51862 0934

Source: https://www.industrydocuments.ucsf.edu/docs/gkpm0000

Facts You Should Know

- We do not think kids should smoke . . PERIOD! That is why we strongly support effective programs like *WE CARD* and the Department of Health and Human Services' new regulations.

- President Clinton's decision is pure political diversion. The day before Clinton made his announcement on FDA, his own administration released a report that teen drug use is skyrocketing.

- The claim that tobacco is a "gateway drug" that leads to the use of illicit drugs is preposterous. If that were true, we would have had a nation filled with drug addicts back in the 50's and 60's when a majority of American adults smoked. Common sense helps people distinguish between legal, culturally-acceptable products like tobacco and mind-altering, hard drugs like cocaine, LSD and heroin.

- The FDA's new regulations clearly are in violation of the First Amendment.

- We could be on our way to prohibition. The government's stated goal is a smoke-free society by the year 2000, and this is yet another step toward the total prohibition of tobacco products. Now the FDA would have the authority to make it happen.

- Clinton's approval of the FDA effort has nothing to do with youth smoking . . . it is an election-year gimmick. All the Clinton administration's political talk about protecting our children can be solved by the new federal regulation enacted this year by HHS.

  - HHS's new regulations requires all 50 states to show dramatic improvement in reducing youth smoking or lose millions of dollars in federal funding for other programs. Since Congress passed the law, more than 30 states have further strengthened their existing laws against youth smoking.

  - The HHS approach gets better results at a lower cost.

    Better results!
    HHS regulations require 80% success within several years. FDA rules would require only a 50% success rate.

    Costs Taxpayers Less!
    HHS regulations cost about $100 million a year. FDA says its rules will cost more than $227 million a year (considered by many to be an extremely low estimate).

  - The HHS regulations give states the flexibility to implement their own programs.

  - The HHS approach was authorized by Congress. FDA was not. Clinton gives unelected bureaucrats at the FDA extraordinary power to dictate how a legal product is manufactured and marketed . . . this is a dangerous precedent.

51862 0935

Source: https://www.industrydocuments.ucsf.edu/docs/qkpm0000